

United States

**Circuit Court of Appeals**

For the Ninth Circuit.

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MASSACHUSETTS TRUST COMPANY, a Corporation,

Appellant,

vs.

LOON LAKE COPPER COMPANY, a Corporation, and J. WEBSTER HANCOX, as Receiver of the LOON LAKE COPPER COMPANY,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

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FILED

DEC 2 1901

F. D. WASHINGTON



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Circuit Court of Appeals  
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1875

Journal of the

Board of

Directors

of the

Company

for the

Year

1875

1875

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

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Attorneys for Plaintiff.

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WILLIAM C. MEYER, Old National Bank Bldg.,  
Spokane, Wash.,  
Attorneys for Defendants.

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In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division, Sitting at Spokane, Washington.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY, Trus-  
tee,

Complainant,

vs.

LOON LAKE COPPER COMPANY and J.  
WEBSTER HANCOX, as Receiver of the  
LOON LAKE COPPER COMPANY,  
Defendants.

## ORIGINAL BILL TO FORECLOSE.

To the Honorable Judge of the District Court of  
the United States for the Eastern District of  
Washington, Northern Division:

Massachusetts Trust Company, a corporation, duly organized and existing under the laws of the Commonwealth of Massachusetts, and with its principal place of business at Boston in the County of Suffolk in said Commonwealth, and a citizen of said Commonwealth, as Trustee, brings this its bill of complaint against Loon Lake Copper Company, a corporation, duly organized and existing under the laws of the State of Washington, with its principal place of business at Spokane, in the County of Spokane, in the State of Washington, and a citizen of said State.

Your orator is informed and believes and therefore alleges that in an action by a creditor against the Loon Lake Copper Company, defendant herein, J. Webster Hancox was heretofore appointed Receiver of the said Company by the Superior Court of the State of Washington, in and for the County of Spokane, and that the said Hancox is a citizen of the State of Washington, residing at Spokane, and is now acting as such Receiver, and [1\*] therefore your orator complains and says as follows:

1. That your orator, Massachusetts Trust Company, is a corporation duly organized and existing

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\*Page-number appearing at foot of page of original certified Transcript of Record.



under the laws of the Commonwealth of Massachusetts, with its principal place of business at Boston in the County of Suffolk in said Commonwealth, and is a citizen of said Commonwealth of Massachusetts.

2. The defendant, Loon Lake Copper Company, is a corporation duly organized and existing under the laws of the State of Washington, with its principal place of business in the City of Spokane, in the County of Spokane, and the State of Washington, and is a citizen of said State of Washington.

3. The defendant, J. Webster Hancox, as Receiver of the Loon Lake Copper Company, was heretofore appointed as such Receiver by the Superior Court of the State of Washington in and for the County of Spokane, and is now acting as such Receiver; that the said J. Webster Hancox is a resident of the City of Spokane, State of Washington, and a citizen of the State of Washington.

4. That on or about the 4th day of December, 1918, and on various dates thereafter, said defendant, Loon Lake Copper Company, by and with the authority of its Board of Trustees, and with the concurrence and consent of the owners and holders of a majority of its capital stock, made, executed and delivered its negotiable bonds to the aggregate amount of \$90,000 par value, consisting of — bonds for the principal sum of \$1000 each and — bonds for the principal sum of \$100 each, said bonds being dated and issued as of November

15, 1918, and becoming due and payable on the 15th day of November, 1921; by the terms of each of which bonds said Loon Lake Copper Company acknowledges itself to owe and for value received promised to pay to the bearer thereof, or in case said bonds should be registered as provided in the Trust Indenture [2] or mortgage given to secure the same, hereinafter set forth, to the registered owner thereof the sum of \$1000 (or \$100 as the case may be), in gold coin of the United States of America of the then present or equal standard of weight and fineness at the Massachusetts Trust Company, in the City of Boston, Massachusetts, together with interest thereon at the rate of eight per centum per annum, payable semi-annually in like gold coin on the fifteenth day of May and November at said Massachusetts Trust Company in Boston, upon presentation and surrender of the respective interest coupons thereto annexed as they severally become due, both principal and interest of said bonds being payable without any deduction so far as permitted by law for any tax or taxes, except any Federal Income tax in excess of two per cent which, under any present or future law of the United States of America, the promisor might be required to pay thereon or to retain therefrom. The form and tenor of said bonds are set forth at large in the mortgage or deed of trust or trust indenture given to secure the same, hereinafter set forth and referred to.

5. That on or about the fourth day of December, 1918, said Loon Lake Copper Company, being

thereunto duly authorized by the action of its Board of Trustees, and with the concurrence and consent of the owners and holders of the majority of the shares of its capital stock, duly made, executed, acknowledged and delivered to your orator, Massachusetts Trust Company, Trustee, a certain Trust Indenture dated the 15th day of November, 1918, wherein and whereby, in order to secure the due and punctual payment of said several bonds for the aggregate principal amount of \$90,000 and the interest thereon, at any time issued and outstanding, according to their purpose, tenor and effect, and to secure the performance and observance of each and every of the covenants and conditions in said mortgage or trust [3] indenture mentioned, said Loon Lake Copper Company granted, bargained, sold, released, conveyed, assigned, transferred and set over, mortgaged and pledged unto and with your orator, Massachusetts Trust Company, as Trustee as therein provided, all of the property and real estate which is set forth and described in said mortgage or trust indenture, and subject to all the terms and conditions of said mortgage or trust indenture as hereinafter set forth at large, and your orator hereby asks leave to refer to the description of the real estate and property therein contained, with the same force and effect as if said descriptions were here inserted and specifically set forth. Also all other property and property rights of whatsoever character and nature, and wherever situated, real, personal or mixed, at the date of

said mortgage or trust indenture, or at any time thereafter acquired, owned, held, possessed or enjoyed by said Company, unto your orator Massachusetts Trust Company, but in trust nevertheless for the equal and proportionate benefit and security of all present and future holders at any time of any of the bonds above mentioned, and the interest coupons appertaining thereto, and to secure the payment of such bonds and the interest thereon, when payable, in accordance with the provisions thereof, and to secure the performance of and compliance with the covenants and conditions of said indenture. Said mortgage or trust indenture dated November 15, 1918, as executed by the parties thereto, and the several certificates of acknowledgment thereunto appended, was and is in the words and figures following, to wit: [4]

Said mortgage or trust indenture was duly delivered to your orator by the Loon Lake Copper Company, on or about the 4th day of December, 1918, and was duly filed for record in the office of the Auditor of Stevens County, Washington, on December 11, 1918, and recorded in Book 34 of Mortgages at page 7, and was also duly filed as File No. 12199, in the said office of the Auditor of Stevens County, Washington, and properly indexed as a chattel mortgage, on December 11, 1918.

6. Your orator, Massachusetts Trust Company, duly accepted the trust created in and by this mortgage or trust indenture and was then and is now fully authorized and empowered to take and hold in trust the property conveyed to it thereby



and to execute the trusts reposed in it under and by virtue of the provisions thereof.

7. That on or about the 4th day of December, 1918, and on various days and dates thereafter, the said Loon Lake Copper Company duly executed of the issue of bonds described in said mortgage—bonds each of the sum of \$1000—and—bonds each of the sum of \$100—and delivered all of said bonds to your orator, Massachusetts Trust Company as Trustee, under said trust indenture or mortgage, and said bonds were duly certified by said Massachusetts Trust Company, Trustee, in all respects as provided in said mortgage or trust indenture, and the bonds of the aggregate par value of \$84,300, together with the interest coupons thereto attached, were, as your orator is informed and believes and charges the fact to be, duly sold and delivered by the Loon Lake Copper Company, for a valuable consideration, in accordance with the provisions of said mortgage or trust indenture, and the said bonds of the aggregate par value of \$84,300, together with interest coupons thereunto attached, are now outstanding in the hands of divers persons and corporations who are now the legal owners and holders thereof for value; and your orator is advised [5] and avers and alleges that said bonds and coupons so issued as aforesaid and now outstanding are now in all respects valid and outstanding obligations of the Loon Lake Copper Company and are entitled to the benefit and security of said mortgage or deed of trust, and that there is now due and owing thereon the principal sum of \$84,300,

with interest thereon at the rate of eight per centum per annum from November 15, 1918.

8. Your orator further avers and shows that said mortgage or trust indenture heretofore mentioned, was and now is a valid and existing lien upon all of the property described in or intended to be conveyed or covered thereby, according to the tenor and effect thereof, said mortgage is a valid and existing lien as aforesaid upon all of the property and property rights of whatsoever character and nature and wheresoever situated, real, personal and mixed, owned, held, possessed or enjoyed by said Loon Lake Copper Company, whether specifically described or mentioned in said mortgage or not.

9. Your orator further shows and alleges that on May 15, 1919, and on each and every interest date thereafter, default was made in the payment of the interest installment then due and payable on the said bonds of the Loon Lake Copper Company then outstanding for the principal amount of \$84,300, according to the tenor and effect of said bonds, and that on November 15, 1921, default was also made in the payment of \$84,300, the principal of the bonds then outstanding, according to the tenor and effect of said bonds.

Your orator further alleges that on none of the dates mentioned were funds provided by the Loon Lake Copper Company, or by any person in its behalf, for the payment of the amounts then due on said outstanding bonds, and that on said dates respectively, demands were made for the payment of the amounts so due, but said payment thereof

was refused, and your [6] orator avers that said defaults in the payment of the amounts aforesaid, which became due and payable as aforesaid, have continued to this time.

Your orator further avers that in accordance with the terms of said mortgage or trust indenture, there is now due and owing upon said bonds the entire principal sum of \$84,300, together with interest thereon at the rate of eight per centum per annum from November 15, 1918, in accordance with the tenor and effect of said bonds and the terms and provisions of said mortgage or deed of trust, and your orator as Trustee, as aforesaid, is now entitled to a foreclosure of said mortgage or trust indenture upon all property subject to the lien thereof, as hereinbefore set forth, and files this, its bill of complaint, for that purpose.

10. Your orator further avers that the value of said mortgaged property is far less than the face amount of the bonds due and unpaid and secured by said trust indenture to your orator hereinbefore set forth.

11. Your orator is informed and believes that the defendant named, J. Webster Hancox as Receiver of the Loon Lake Copper Company, has, or claims to have, some interest in the property or real estate described in, or intended to be covered by, the said mortgage or trust indenture, but such interest, if any, is subsequent, inferior and subject to said mortgage or trust indenture.

FORASMUCH THEREFORE, as your orator is without remedy in the premises, according to

the strict rule of the common law, and can only have relief in a Court of Equity where matters of this kind are properly cognizable, your orator prays the aid of this Honorable Court, to the end:

(1) That the said defendants, and each of them, may be required to make answer unto all and singular the matters hereinbefore stated and charged, as fully and particularly as if thereunto [7] particularly interrogated, but not under oath, answer under oath being hereby expressly waived.

(2) That an accounting may be taken of all the property subject to the lien of said mortgage or trust indenture, and that said mortgage or trust indenture may be decreed to be a valid lien upon all and singular the real estate and other property subject to the lien thereof as hereinbefore alleged and shown, together with all the appurtenances, rights and privileges thereunto belonging or in anywise appertaining, including all improvements and additions thereto made since the date of said mortgage or trust indenture, and also including all property acquired by the said Loon Lake Copper Company since the date of said mortgage.

(3) That the said Loon Lake Copper Company may be decreed to pay by a short day to be fixed by this Honorable Court, unto your orator for the use and benefit of the bondholders under the aforesaid mortgage or trust indenture, the principal of said bonds and all interest due and payable on said bonds together with all costs and expenses in this suit incurred and contracted, including the compensation of your orator and its attorneys and so-



licitors, and in default thereof that the said Loon Lake Copper Company, and any other defendant herein, and all persons and corporations claiming under them or any of them, may be forever barred and foreclosed of all right and equity of redemption and claim in and to said mortgaged premises and property and every part and parcel thereof, and that all and singular of said mortgaged premises and property, together with the appurtenances and fixtures, rights and privileges belonging or thereunto appertaining in said mortgage described, or subject to the lien thereof as hereinbefore set forth, may be sold under a decree of this Honorable Court, and that the proceeds of any such sale may be applied as follows, to wit:

First. To the payment of all costs, fees and expenses of this suit including all reasonable fees and expenses of the Trustee, together with reasonable attorneys or solicitors' fees and all costs of advertising sale and conveyance

Second. To the *pro rata* payment of all interest coupons remaining unpaid, and interest thereon at the rate of eight per centum per annum.

Third. To the *pro rata* payment of the principal of the bonds issued hereunder remaining unpaid, in accordance with the provisions of said mortgage or trust indenture; the surplus of the purchase money, if any, to be paid to the Loon Lake Copper Company, or to whomsoever shall be entitled thereto.

Fourth. That upon any such sale any purchaser for or in settlement or payment of the purchase price of the property purchased, may be permitted

to use and to apply any of said bonds secured by said mortgage or trust indenture and any unpaid interest coupons thereto attached, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of any of the proceeds of said sale to the owner of said bonds and coupons as his ratable share of such net proceeds, and that upon such application said purchaser may be credited on account of such purchase price payable by him, with the portion of such net proceeds that shall be applicable to the payment of and that shall have been credited upon the bonds and coupons so presented, and that at any such sale any bondholders may bid for and purchase said property and make payment therefor as aforesaid, and upon compliance with the terms of sale may hold, retain and dispose of said property without further accountability; and your orator further prays that an accounting may be taken of the bonds secured by said mortgage or trust indenture and of the amount due upon said bonds for principal and interest, and [9] of the amounts due for expenses of your orator and of its attorneys and solicitors herein; and that the Loon Lake Copper Company and all other persons claiming by, through or under it, may be decreed to make such transfer or conveyance to the purchasers of said property at any sale to be ordered by this Honorable Court as may be necessary and proper to put them or either of them in possession and control of said property; and that your orator may have such other and further relief in the premises as the nature

of the circumstances of this case may require and to this Honorable Court shall seem meet.

May it please the Court to grant unto your orator a writ of subpoena in chancery to be issued out of and under the seal of this court directed to the defendants, requiring them to appear on a day certain before this Court, and then and there full, true and correct answer make to all and singular the allegations herein, but not under oath, answer under oath being hereby expressly waived, and to perform and abide by all such orders and decrees of this Court that the Court may enter herein.

MASSACHUSETTS TRUST COMPANY,  
Trustee,

By F. W. DEWART,  
Its Solicitor. [10]

United States of America,  
Eastern District of Washington,  
Northern Division,—ss.

State of Washington,  
County of Spokane,—ss.

F. W. Dewart, being first duly sworn, deposes and says he is the solicitor of and the duly authorized agent in this behalf of the Massachusetts Trust Company, complainant in the above-entitled cause, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true, except as to the matters therein stated to be alleged on information and belief, and that as to such matters he believes the same to be true.

F. W. DEWART.



answer to the bill of complaint of plaintiff admits all of the allegations of said complaint.

LAWRENCE H. BROWN,  
WILLIAM C. MEYER,

Solicitors for Defendant Loon Lake Copper Company.

Service admitted this 13th day of February, 1924.

SAM'L R. STERN,  
ALBERT KULZER,

Attorneys for J. Webster Hancox, Receiver.

Filed in the U. S. District Court, Eastern District of Washington. Feb. 14, 1924. Alan G. Paine, Clerk. [12]

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In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, Washington.

IN EQUITY—No. —.

MASSACHUSETTS TRUST COMPANY, Trustee,

Plaintiff,

vs.

LOON LAKE COPPER COMPANY and J. WEBSTER HANCOX, as Receiver of the LOON LAKE COPPER COMPANY,  
Defendants.



ANSWER TO ORIGINAL BILL TO FORE-  
CLOSE.

To the Honorable J. STANLEY WEBSTER, Judge  
of the District Court of the United States, for  
the Eastern District of Washington, Northern  
Division:

The answer of J. Webster Hancox, as receiver of  
the Loon Lake Copper Company to the bill of com-  
plaint:

Comes now J. Webster Hancox, as Receiver of  
the Loon Lake Copper Company, and says for an-  
swer thereto:

1. Defendant in answer to paragraph 1 admits  
each and every allegation, matter and thing con-  
tained in said paragraph 1 of said bill.

2. Defendant in answer to paragraph 2 admits  
each and every allegation, matter and thing con-  
tained in said paragraph of said bill.

3. Defendant in answer to paragraph 3, admits  
each and every allegation, matter and thing con-  
tained in said paragraph of said bill.

4. Defendant in answer to paragraph four, ad-  
mits that the Loon Lake Copper Company made,  
executed and delivered negotiable bonds, as alleged  
in said paragraph, dated November 15th, 1918, and  
due and payable on the 15th day of November, 1921.  
Defendant states that he has no knowledge or belief  
as to the allegation that any of these bonds were  
issued on or [13] about the 4th day of December,  
1918, and therefore denies the same; admits each and  
every other allegation in said paragraph.

5. Defendant in answer to paragraph 5, admits that the Loon Lake Copper Company executed a trust indenture which bore date November 15th, 1918, but denies that the same was executed and delivered to the Massachusetts Trust Company, Trustee, on the 4th day of December, 1918, as alleged in line 20, page 3, and again on lines 1, 2 and 3 of page 36, of said paragraph, and further denies that the copy of said trust deed or indenture set out in said paragraph is a true and correct copy of said deed as executed by the Loon Lake Copper Company; further admits that said instrument was filed as a chattel mortgage, as set forth in lines 3, 4, 5, 6, 7 and 8, of page 36 of said paragraph.

6. Defendant in answer to paragraph six admits the allegations and things contained in said paragraph.

7. Defendant in answer to paragraph 7 denies that on the 4th day of December, 1918, the Loon Lake Copper Company executed the instruments therein set forth, but admits that said instruments were executed on and after the 15th day of November, 1918.

8. Defendant in answer to paragraph 8 admits that said mortgage or trust indenture is a valid and existing lien against the real property described therein, but defendant denies that said mortgage or trust indenture is a valid or existing lien as to any of the personal property owned at the time the said instruments were executed, or acquired thereafter, by the said Loon Lake Copper Company.

9. Defendant in answer to paragraph 9, admits the allegations therein contained as to the nonpayment of the bonds as therein alleged, but denies that the plaintiff is entitled to foreclose said mortgage, except as against the real property of the Loon Lake Copper Company, as set forth by defendant in paragraph 8 of this answer. [14]

10. This defendant in answer to paragraph 10 alleges that he has no knowledge or belief as to the truth of the allegations therein set forth, and therefore denies the same.

11. Defendant in answer to paragraph 11 admits that the claim of said plaintiff to foreclose his lien against the real property is superior to that of this defendant, but denies the claim of said mortgage or trust deed is superior to the claim of the receiver herein or that the plaintiff herein has any right whatsoever or any lien upon the personal property belonging to said Loon Lake Copper Company.

As a FIRST affirmative answer and further defense to the complaint of plaintiff the defendant alleges:

That the Loon Lake Copper Company made, executed and delivered a mortgage or trust indenture in which the plaintiff was made trustee, but alleges that said instrument was made and executed on or about the 27th day of November, 1918, and filed for record on December 13th, 1918, and denies that said mortgage or trust indenture is a valid lien against the personal property of the Loon Lake Copper Company owned by it at that time, or after-



wards acquired by it; alleges that the lien of said instrument is void as to this receiver, who represents the creditors of said corporation, for the reason that said instrument was not filed as a chattel mortgage with the auditor of Stevens County, Washington, where said personal property was and is situated within ten days after the date of execution of said chattel mortgage, to wit, within ten days after the 27th day of November, 1918, all as required by the statutes of the State of Washington relating to the filing of chattel mortgages, Sections 3780 and 3781 of Remington Compiled Statutes of the State of Washington.

Defendant as a SECOND affirmative answer and a further defense to the complaint of plaintiff alleges: [15]

That the mortgage or trust indenture set out in plaintiff's complaint does not constitute a valid lien, as against any personal property acquired by the Loon Lake Copper Company after the time of the executing of the mortgage or trust indenture set forth in plaintiff's complaint, which mortgage or Trust Deed was executed on or about November 27th, 1918, and this defendant alleges that all of the following described property now located and situated on the property belonging to the Loon Lake Copper Company in the County of Stevens, State of Washington, was acquired by said company after the executing of the said instrument. That the following is a list of the property acquired since and on which defendant alleges the lien of plaintiff's mortgage does not exist:

IR10 15x9x12 Belt Driven Compressor.

1-36"x6' Aid Receiver.

ER-1 6x4 Belt Driven Compressor.

1-5" Cell Ziegler Flotation Machine.

1-5" Cell Ziegler Flotation Machine.

2-4x4 Union Iron Wks. Ball Mills (Nee.

1-20x6 Dorr Thickner.

1-4' 3 leaf American Filter.

1-5x7 Triplex Goulds Pump.

1-15x9 Blake Crusher.

1-24" Symons Disc Crusher.

1-10x10 Steam Engine.

1-8½x10 Ottumwa Non-reversible Hoist.

1-35 H. P. D. C. Generator.

Head & Foot pulleys and 30 Troughing rolls for 16"  
conveyor.

6 Cylinder Marine Type Gas Engine.

All tools, marine type Gas Engine.

together with all mining, blacksmith, office and other equipment and all personal property of every nature, owned by said Loon Lake Copper Company.

As a THIRD affirmative answer and further defense to the complaint of plaintiff, this defendant alleges:

That at the time of executing said mortgage the said mortgage, said bonds, and trust deed, the only consideration which passed to the said Loon Lake Copper Company for executing the same was as follows: That the said Loon [16] Lake Copper Company executed notes or bonds, binding itself to pay the total sum of ninety thousand (\$90,000.00) dollars at various times and in various amounts, together

with interest thereon at the rate of eight per cent per annum from November 15th, 1918, all as set forth in plaintiff's complaint, and that the said Loon Lake Copper Company received in cash or its equivalent for said bonds, money, property, and other things of value, the sum of Sixty Thousand (\$60,000.00) Dollars, and no further or other amount of money or value. That the actual money received by the said Loon Lake Copper Company was the said sum of \$60,000.00. That according to the laws of the State of Washington said contract was an usurious contract, and that said plaintiff herein is entitled to judgment on said obligations in the sum of Ninety Thousand (\$90,000.00) Dollars, less penalty, and no other or greater sum, as provided by the statutes of the State of Washington covering Usurious Contracts, to wit: Chapter 46, Sections 7299 to 7305, inclusive, Remington's Compiled Statutes of the State of Washington.

As a FOURTH affirmative answer and further defense to the complaint of the plaintiff this defendant alleges:

That he was duly appointed receiver of all the property of the Loon Lake Copper Company, a corporation, in the State of Washington, by the Superior Court of Spokane County, Washington, on the 26th day of December, 1919. That he on said date duly qualified as such receiver, and has been, and still is, the acting receiver of said corporation. That there has been filed with him as such receiver claims in the sum of \$14,366.91, of which \$9,329.73 are claims for labor performed for said company

prior to his appointment, which labor claims by the statutes of the State of Washington, Remington's Code, Section 1149, are superior to the lien of plaintiff's trust deed; further, that there [17] has accumulated taxes against the property under his control in Stevens County, Washington. That by action duly authorized he brought suit to have the taxes on the said property adjusted and that there is now due and owing said Stevens County, Washington, for taxes against the said property a sum in excess of One Thousand (\$1,000.00) Dollars. That said property would long since have been sold for taxes had not this receiver brought said action above referred to. That from the time of this defendant's appointment as such receiver, to wit, on December 26th, 1919, and up until the instituting of this action, he has been unable to get any word from the owner or trustee looking toward the settling of the affairs of this company, nor any assistance whatsoever from said parties, either in preserving the property or disposing of the same. Also he has been informed by those most heavily interested that the matter has been charged off as a loss and that since his appointment he has been and still is preserving and holding said property intact for all parties interested therein. That said receiver has performed various services for all the creditors and lienholders of the said Loon Lake Copper Company, but that his compensation has not as yet been fixed by the Superior Court under whose direction said receivership has been conducted, and that the costs of said receivership have not yet been ascertained by said Superior



Court. This defendant alleges that said costs are a prior lien to the lien of the trust deed as set forth in plaintiff's complaint, and that said foreclosure if allowed against any of the property of the Loon Lake Copper Company for any amount should be allowed subject to the costs and compensation of the receiver, to be determined by the Superior Court of Spokane County, Washington, under whose direction said receivership is being directed. [18]

Having thus fully answered all the matters and things contained in the bill, this defendant prays that said bill be dismissed as to that part of plaintiff's complaint which seeks to foreclose the trust deed therein referred to as a lien against the personal property owned by the Loon Lake Copper Company, and now the hands of this defendant as Receiver of said company, and that the court find that there is nothing due said Massachusetts Trust Company as Trustee under said bond issue, as set forth in plaintiff's complaint, and that any foreclosure permitted by this court be permitted against the real property only of the Loon Lake Copper Company, and be made subject to the costs, including compensation for the Receiver, in the Superior Court of the State of Washington, and subject to the lien of the labor claimants filed with the receiver herein, and that this defendant have judgment for his costs in this behalf incurred.

SAMUEL R. STERN,  
ALBERT I. KULZER,  
Attorneys for Receiver. [19]

State of Washington,  
County of Spokane,—ss.

J. Webster Hancox, being first duly sworn, upon oath deposes and says that he is the Receiver of the Loon Lake Copper Company, a corporation, and defendant named in the above-entitled action; that he has read the foregoing Answer to original bill to foreclose, knows the contents thereof, and that the same is true, as he verily believes.

J. WEBSTER HANCOX.

Subscribed and sworn to before me this 15th day of December, 1923.

[Seal] W. C. LOSEY,  
Notary Public in and for the State of Washington,  
Residing at Spokane.

Filed in the U. S. District Court, Eastern District of Washington. Dec. 19, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [20]

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In the District Court of the United States, in and for the Eastern District of the State of Washington, Northern Division, Sitting at Spokane.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY,  
Plaintiff,

vs.

LOON LAKE COPPER COMPANY and J.  
WEBSTER HANCOX, as Receiver of  
LOON LAKE COPPER COMPANY,  
Defendants.

ORDER TO STRIKE FROM ANSWER.

Now, this day the plaintiff having withdrawn his motion to strike from the answer of defendant, the second, third and fourth affirmative answers, and defenses, and the cause coming on to be heard on the other motion by plaintiff to strike from the answer of defendant J. Webster Hancox, as receiver, and the Court having heard the said motion,—

IT IS ORDERED that there be stricken from the answer of defendant J. Webster Hancox, as receiver, the matter on page six, included between the words “That from the” in line eight, down to the word “Therein” in line 19, both inclusive.

The other part of said motion is hereby denied.

Dated this 16th day of January, 1924.

J. STANLEY WEBSTER,

Judge.

O. K. as to form.

J. WEBSTER HANCOX.

Filed in the U. S. District Court, Eastern District of Washington. Jan. 17, 1924. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [21]

In the District Court of the United States, in and for the Eastern District of the State of Washington, Northern Division, Sitting at Spokane.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY, a Corporation,

Plaintiff,

vs.

LOON LAKE COPPER COMPANY, a Corporation, and J. WEBSTER HANCOX, as Receiver for Said LOON LAKE COPPER COMPANY, a Corporation,

Defendants.

#### DECREE.

This cause coming regularly on to be heard on the 11th day of March, 1924, the plaintiff appearing by its attorney, F. W. Dewart, and the defendant, the Loon Lake Copper Company, a corporation, appearing by its attorneys, Lawrence H. Brown and W. C. Myers, and J. Webster Hancox, the Receiver of the Loon Lake Copper Company, appearing in person, and by Samuel R. Stern and Albert I. Kulzer, his attorneys, and the parties having introduced their testimony, and the Court being fully advised in the premises, finds that it has the jurisdiction of the parties and of the subject matter.

The Court further finds that the Loon Lake Copper Company, a Washington corporation, made,



executed and delivered a trust deed for the purpose of securing an issue of ninety thousand (\$90,000.00) Dollars worth of bonds, which bonds evidenced an actual loan of Sixty Thousand (\$60,000.00) Dollars. That said bonds were dated November 15th, 1918. That said deed of trust was signed, sealed, acknowledged and delivered by the Loon Lake Copper Company on November 27th, 1918, and accepted by the Massachusetts Trust Company on or about November 27th, 1918, and not later than November 29th, 1918, and that the said trust deed was executed by both parties on or about the 27th day of November, 1918, and not later than November 29th, 1918. [22]

The Court further finds that said deed of trust was filed for record as a real estate mortgage in the County of Stevens, State of Washington, on the 11th day of December, 1918, and recorded in Book 34 of Mortgages, at page 7, and that it was duly filed as a chattel mortgage in the said office of the Auditor of Stevens County, Washington, on December 11th, 1918.

The Court finds that the trust deed covers the following described real estate, to wit:

The North half (N.1/2) of Section Thirty-three (33), Township thirty-one (31) North, Range forty-one (41) East Willamette Meridian, excepting about ten acres in the eastern portion belonging to other parties, containing three hundred and ten (310) acres, more or less, in Stevens County, State of Washington,

together with the buildings, plants, mills, dredges, motors, machinery, electrical appliances, poles, wires, conduits, merchandise and other equipment, and all other real estate and tangible personal property of every sort and description, whether then owned or thereafter acquired by the company.

The Court finds that the said trust deed does not constitute a lien on any of the personal property owned by the said Loon Lake Copper Company as against the Receiver and the creditors of the Loon Lake Copper Company, and that said trust deed is void as to them for the reason that said trust deed was not filed as a chattel mortgage within the time required by the laws of the State of Washington, to wit, within ten days after the execution of said instrument, all as required by Section 3780 of Remington's Compiled Statutes of the State of Washington.

The Court further finds that no part of the principal of ninety thousand (\$90,000.00) dollars, or any interest thereon, [23] has been paid, and that the said Loon Lake Copper Company is in default by reason of said failure to pay the principal and interest, according to the terms of the bond.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff be and hereby is permitted to foreclose said trust deed against the real property belonging to said Loon Lake Copper Company, and hereinafter described,

and that the petition of said plaintiff, seeking to foreclose said mortgage against the personal property of the Loon Lake Copper Company, and now in the hands of the defendant, J. Webster Hancox, Receiver, be and the same is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the premises described in plaintiff's bill of complaint, and hereinafter described, be sold in the manner provided by law, and the proceeds arising from said sale be applied upon the amount found due plaintiff, with costs, attorney's fees, and accrued costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that whatever right, title, interest, or claim that the defendants, or either of them, may have in or to the real estate hereinafter described is subject, inferior and subordinate to plaintiff's mortgage lien, and that the said defendants be, and they are, hereby estopped and foreclosed from having or exercising any right, interest, lien or estate in and to the said premises, except the right of redemption, as provided by statute, and it is further ordered that any party to this action may become a purchaser at said sale.

That the premises described in plaintiff's mortgage, and to be sold by the United States Marshal for the Eastern District of Washington, are described as follows, to wit:

The North half (N.1/2) of Section thirty-three (33), Township thirty-one (31) North, Range forty-one (41) East of the Willamette Meridian, excepting about ten acres in the

eastern portion belonging to other parties, containing three hundred and ten (310) acres, more or less, in Stevens County, State of Washington.

Dated this 6th day of ———.

J. STANLEY WEBSTER,

District Judge.

Filed in the U. S. District Court, Eastern Dist. of Washington. May 6, 1924. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [24]

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DEPOSITION OF ARNOLD WHITTAKER.

The following testimony of ARNOLD WHITTAKER was taken by deposition:

My name is Arnold Whittaker. I am 41 years of age, and reside at Winchester, Massachusetts.

On the 15th day of November, 1918, I was Secretary of the Massachusetts Trust Company, a Massachusetts corporation, having its principal place of business at Boston, Massachusetts. I continued as such secretary until December 3, 1919, when I became Treasurer of the Company, which is my present position, together with that of Vice-President.

I am the Arnold Whittaker who as Secretary of the Massachusetts Trust Company, acknowledged the deed of trust executed by the Loon Lake Copper Company to the Massachusetts Trust Company on November 29, 1918. Said deed of trust was actually delivered to and accepted by the Massachusetts Trust Company on December 4, 1918.



(Deposition of Arnold Whittaker.)

It is the practice of the Massachusetts Trust Company not to accept any trust or execute any legal document under which it is obligated in any way until such document has been examined and approved by its counsel. This deed of trust was therefore submitted to Mr. Guy A. Ham, an Attorney-at-law, 24 Milk Street, Boston, Massachusetts, for his examination and approval before it was finally accepted and delivered by the Massachusetts Trust Company. The document was handed to Mr. Ham about November 29, 1918, and on December 4, 1918, it was approved by Mr. Ham, and on that date the formal delivery was actually accepted by the Massachusetts Trust Company and Mr. Ham was instructed to forward the instrument to Frederick W. Dewart, Esq., 801-802 Old National Bank Building, Spokane, Washington, to be recorded. This [25] instrument, that is, the deed of trust was actually acknowledged on November 29, 1918, but as I just stated, it was not actually accepted and delivered until December 4, 1918, on which date, it was formally approved by our counsel and the delivery was made by him in accordance with our instructions.

On his cross-interrogatories, Mr. ARNOLD WHITTAKER testified as follows:

I arrived at the date of December 4, 1918, as the date on which this trust deed was delivered to the Massachusetts Trust Company, by making an examination of our records to refresh my personal recollection of the transaction, but my recollection

(Deposition of Arnold Whittaker.)

of such delivery date was verified by such examination, and also by the fact that I ascertained through my own personal investigation that on said date—namely, December 4, 1918,—Guy A. Ham, the counsel for the Massachusetts Trust Company, forwarded it by mail at my request to Frederick W. Dewart, Spokane, Washington, for the purpose of being recorded by Mr. Dewart with the proper officials in the State of Washington, which letter from Mr. Ham to Mr. Dewart is made a part of this my answer (being Plaintiff's Exhibit 1, hereinafter set out). The deed of trust contains the following provision: "Although this indenture is dated for convenience and for the purpose of reference as of November 15, 1918, the actual date of the execution hereof is November 27, 1918." That provision is a statement of the facts relative to the actual date of signature, and was inserted in the deed of trust to explain the apparent discrepancy in dates. The reason the deed of trust was not delivered on either of said dates, but was actually delivered on December 4, 1918, is, as I have previously stated, because the instrument was submitted to Guy A. Ham, counsel for the [26] Massachusetts Trust Company, for his approval, and after he had approved it, the delivery of the deed of trust was actually accepted on December 4, 1918. This deed of trust was in the possession of counsel for the Massachusetts Trust Company between November 29, 1918, and December 4, 1918, for the purpose of examination.

(Deposition of Arnold Whittaker.)

After the Massachusetts Trust Company's officials acknowledged the deed of trust, which acknowledgment was on the 29th day of November, 1918, it was submitted to its counsel, Guy A. Ham, Esq., for examination and approval before it was definitely accepted by the Massachusetts Trust Company.

After the instrument was approved by the counsel for the Massachusetts Trust Company, and accepted by it on December 4, 1918, notice of the Massachusetts Trust Company's acceptance being given on that date to the Loon Lake Copper Company, Mr. Ham forwarded it by mail to Frederick W. Dewart, Esq., 801 Old National Bank Building, Spokane, Washington, to be recorded.

The deed of trust was sent by mail to Frederick W. Dewart, Esq., 801 Old National Bank Building, Spokane, Washington, on December 4, 1918, by Guy A. Ham, Esq., counsel for the Massachusetts Trust Company.

On December 4, 1918, our counsel, Guy A. Ham, Esq., delivered the deed of trust by sending it by mail to Frederick W. Dewart, Esq., 801-802 Old National Bank Building, Spokane, Washington, who at that time was counsel and an officer of the Loon Lake Copper Company and requested Mr. Dewart to record the instrument.

Guy A. Ham, counsel for the Massachusetts Trust Company, mailed said instrument with the letter of December 4, 1918 (hereinafter set out as Plaintiff's Exhibit No. 1), [27] addressed to

(Deposition of Arnold Whittaker.)

Frederick W. Dewart, Spokane, Washington. Guy A. Ham, counsel for Massachusetts Trust Company, received a letter dated December 10, 1918, from Frederick W. Dewart of Spokane, Washington, acknowledging receipt of said instrument, which letter (Plaintiff's Exhibit No. 3) is made a part of this deposition. I find no evidence here of any registry receipt from the postoffice ever having been returned. I know of no other correspondence relative to the executing, filing or recording of the trust deed.

The above deposition of Arnold Whittaker was read and received in evidence.

TESTIMONY OF FREDERICK W. DEWART, FOR PLAINTIFF.

FREDERICK W. DEWART, a witness called on behalf of the plaintiff, being sworn, testified as follows:

The letter (Plaintiff's Exhibit No. 1) attached to Mr. Ham's deposition was received by me in Spokane on December 9; the mortgage was forwarded by me on that same date to the county auditor at Colville, in Stevens County, Washington, for recording, and my acknowledgment (Plaintiff's Exhibit No. 3) to Mr. Ham went forward to him on the next day, December 10.

All the money received from the sale of these mortgage bonds was used by the Loon Lake Copper Company in the purchase of machinery and other supplies in the operation of the plant, and



(Testimony of Frederick W. Dewart.)

practically all of the machinery that is there now was purchased with the money from these bonds.

On cross-examination, Mr. Dewart testified:

At that time I was an officer of the Loon Lake Copper Co. All this money was expended after the bond issue was made. All these purchases were made and delivered to [28] the Loon Lake Copper Co. within a year or a little less. I have seen the other officers of the Loon Lake Copper Co. since the execution of this bond and since this suit was started, and they do not have, to my knowledge, any other record than that introduced here, except the trust deed delivered to the Massachusetts Trust Company, and except the letter of acceptance of December 4. That letter of acceptance from the Massachusetts Trust Company, dated December 4, is in Boston. Such a letter was sent to the officials in Boston.

This was an issue of bonds gotten out by the Loon Lake Copper Co. which asked the Massachusetts Trust Company to act as trustee of the bond issue.

#### TESTIMONY OF J. W. HANCOX, FOR DEFENDANTS.

J. W. HANCOX, a witness for the defendants, being sworn, on direct examination, testified:

I was appointed receiver of the Loon Lake Copper Co. about December 26, 1919, by the Superior Court of Spokane County, Washington, and have been acting as such ever since.

(Testimony of J. W. Hancox.)

All the movable portions of the property that the Massachusetts Trust Company is now asserting title to, were, under my direction, moved to the town of Loon Lake and placed in care of a watchman, so that everything could be preserved for whomsoever might be decreed to be the owner of it. I have performed services as receiver since my appointment. The receivership has not been closed and I have not been paid for my services. The only assets out of which the expenses of the receivership can be realized is this property.

#### TESTIMONY OF ALBERT KULZER FOR DEFENDANTS.

ALBERT KULZER, a witness for the defendants, being sworn testified on direct examination as follows: [29]

I recently examined the original mortgage on file with the County Auditor at Colville, Stevens County, Washington, and I notice that the last words there—"November 27, 1918"—are in the handwriting corresponding with that of Arnold Whittaker, Secretary, who acknowledged the instrument. That is just in the filling in of the date. The clause itself was typewritten. The instrument was filed December 11.

Filed in the U. S. District Court, Eastern Dist. of Washington. Oct. 30, 1924, — M. Alan G. Paine, Clerk. By Eva M. Hardin, Deputy. [30]

In the District Court of the United States in and  
for the Eastern District of the State of Wash-  
ington, Northern Division, Sitting at Spokane.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY, Trus-  
tee,

Plaintiff,

vs.

LOON LAKE COPPER COMPANY AND J.  
WEBSTER HANCOX, as Receiver of  
LOON LAKE COPPER COMPANY,  
Defendants.

#### ORDER SETTLING STATEMENT.

This cause coming on regularly to be heard be-  
fore the Court for the purpose of settling the  
statement of evidence and exhibits and the parties  
having approved said statement and said *statement*,  
*exhibits* having been heretofore lodged with the  
Clerk of this Court,—

NOW, THEREFORE, the Court doth hereby  
certify that the matters and proceedings contained  
in the foregoing statement of evidence and exhibits  
are the matters and proceedings occurring in the  
above-entitled cause and the same are hereby made  
a part of the record herein, and that the same  
contains all exhibits and all the material facts and  
proceedings heretofore occurring and the evidence  
received in said cause in anywise material or ap-  
purtenant to this appeal.

And it is hereby further certified that said statement of evidence contains all the material evidence and testimony to adduced upon trial of said cause and reduced to narrative form, except where for the sake of clarity, testimony is reproduced *verbatim* which is material to and which was received upon the trial of said cause in connection with the matters and things involved in this appeal.

IT IS THEREFORE HEREBY ORDERED: That the said statement [31] of evidence and exhibits be and the same are hereby certified and allowed as required by Equity Rule 75.

Done in open court this 30th day of October, 1924.

J. STANLEY WEBSTER,  
District Judge.

O. K.—WILLIAM C. MEYER,  
J. HANCOX,  
Receiver and for Sam'l R. Stern and Albert Kulzer, Attorneys for Appellees.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 30, 1924. —M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [32]

In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, Washington.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY, Trustee,

Complainant,

vs.

LOON LAKE COPPER COMPANY and J. WEBSTER HANCOX, as Receiver of the LOON LAKE COPPER COMPANY,  
Defendants.

#### ASSIGNMENTS OF ERROR.

Comes now Massachusetts Trust Company, Trustee, and says that in the decree made and entered in the above-entitled proceeding on May 6th, 1924, there is manifest error and files the following assignments of error committed and happening in said proceeding upon which it will rely in its appeal from said decree.

The Court erred as follows:

1. In holding that the chattel mortgage described in the bill of complaint was executed before the same was accepted by the Massachusetts Trust Company on December 4th, 1918.

2. In failing and refusing to hold that said chattel mortgage was executed on December 4th, 1918.

3. In holding that said chattel mortgage was accepted by the Massachusetts Trust Company on



or about November 27th, 1918, and not later than November 29th, 1918.

4. In failing and refusing to hold that said chattel mortgage was accepted by said Massachusetts Trust Company on December 4th, 1918.

5. In holding that said chattel mortgage was not filed in the office of the Auditor of Stevens County, Washington, within ten days after its execution as required by Section 3780, Remington's Compiled Statutes of the State of Washington. [33]

6. In holding said chattel mortgage void as to the Receiver and creditors of Loon Lake Copper Company and further holding that the same is not a lien on the personal property owned by said Loon Lake Copper Company and in the hands of its Receiver.

7. In failing and refusing to hold said chattel mortgage to be a valid lien on the personal property of said Loon Lake Copper Company and that complainant was entitled to foreclose the same against the personal property of said Loon Lake Copper Company in the hands of J. Webster Hancox, its Receiver.

8. In failing to decree a foreclosure in favor of complainant on said personal property in the hands of said J. Webster Hancox, receiver of said Loon Lake Copper Company.

Dated this 27th day of October, 1924.

F. W. DEWART,  
LAWRENCE E. BROWN,  
Attorneys for Complainant.

Copy of the within assignments of error received this 27th day of October, 1924.

WILLIAM C. MEYER,  
J. WEBSTER HANCOX,  
Receiver, and for  
S. R. STERN and  
ALBERT KULZER,  
Attorneys for Defendants.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 27, 1924. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [34]

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In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, Washington.

IN EQUITY—No. E-4420.

MASSACHUSETTS TRUST COMPANY, Trustee,

Complainant,

vs.

LOON LAKE COPPER COMPANY and J. WEBSTER HANCOX as Receiver of the LOON LAKE COPPER COMPANY,  
Defendants.

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable J. STANLEY WEBSTER,  
Judge of the Above-entitled Court:

Massachusetts Trust Company, a corporation, Trustee, complainant, in the above-entitled action,

feeling itself aggrieved by the decree of this Court made and entered herein on the 6th day of May, 1924, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignments of error filed herein, and prays that this appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings, and papers upon which said decree is based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California. Further that this Court enter its order fixing the security to be required of your petitioner on said appeal.

Dated this 27th day of October, 1924.

F. W. DEWART,

L. H. BROWN,

Attorneys for Complainant,

Filed in the U. S. District Court, Eastern District of Washington. Oct. 27, 1924. Alan G. Paine, Clerk. Eva M. Hardin, Deputy.

Copy of foregoing petition for appeal received October 27th, 1924.

WILLIAM C. MEYER,

J. WEBSTER HANCOX,

Receiver, and for

S. R. STERN and

ALBERT KULZER,

Attorneys for Defendants. [35]

In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, Washington.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY, Trustee,

Complainant,

vs.

LOON LAKE COPPER COMPANY and J. WEBSTER HANCOX, as Receiver of the LOON LAKE COPPER COMPANY, Defendants.

#### ORDER ALLOWING APPEAL.

The foregoing petition of Massachusetts Trust Company, Trustee, for an appeal from the decree entered herein on May 6th, 1924, to the United States Circuit Court of Appeal for the Ninth Circuit is hereby granted and allowed.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars.

Dated this 27th day of October, 1924.

J. STANLEY WEBSTER,  
District Judge.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 27, 1924. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [36]

In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision, Sitting at Spokane, Washington.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY, Trus-  
tee,

Complainant,

vs.

LOON LAKE COPPER COMPANY and J.  
WEBSTER HANCOX, as Receiver of the  
LOON LAKE COPPER COMPANY,  
Defendants.

APPEAL BOND.

KNOW ALL MEN BY THESE PRESENTS:  
That we, Massachusetts Trust Company, a corpora-  
tion, organized and existing under and by virtue  
of the laws of the State of Massachusetts, of Bos-  
ton, Massachusetts, as principal, and American  
Surety Company, of New York, a Corporation,  
organized and existing under and by virtue of the  
laws of the State of New York, and authorized  
to act as surety and to do business in the State of  
Washington, as Surety, are held and firmly bound  
unto Loon Lake Copper Company and J. Webster  
Hancox as Receiver of the Loon Lake Copper Com-  
pany, defendants above named, in the full and just  
sum of Five Hundred (\$500.00) Dollars, for the  
payment of which well and truly to be made we  
hereby bind our, and each of our executors and as-



signs, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Spokane, Washington, this 28th day of October, 1924.

WHEREAS the complainant above named has duly appealed from the final Decree herein entered May 6th, 1924, to the United States Circuit Court of Appeals for the Ninth Circuit holden at San Francisco, California and [37]

WHEREAS the above-entitled court fixed the amount of the bond to be given by said complainant on its appeal in the sum of Five Hundred (\$500) Dollars.

NOW, THEREFORE, if the complainant shall prosecute its appeal to effect, and if it fail to make its plea good, shall answer all costs, then this obligation shall be null and void; otherwise to remain in full force and effect.

MASSACHUSETTS TRUST COMPANY,

By LAWRENCE H. BROWN,

Its Attorney.

AMERICAN SURETY COMPANY OF  
NEW YORK.

By W. L. BERRY,

Resident Vice-President.

Attest: J. B. WRIGHT,

Resident Assistant Secretary.

The foregoing bond and the surety therein is approved this 28th day of October, 1924.

J. STANLEY WEBSTER,

United States District Judge for the Eastern District of Washington, Northern Division.

O. K. as to form, signatures and amount.

W. C. MEYER,  
J. WEBSTER HANCOX,  
Receiver, and for  
SAM'L R. STONE and  
ALBERT KULZER,  
Solicitors for Defendants.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 28, 1924. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [38]

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In the District Court of the United States in and for the Eastern District of the State of Washington, Northern Division, Sitting at Spokane.

IN EQUITY—No. E-4220.

MASSACHUSETTS TRUST COMPANY, Trustee,

Plaintiff,

vs.

LOON LAKE COPPER COMPANY and J. WEBSTER HANCOX, as Receiver of LOON LAKE COPPER COMPANY, Defendants.

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States to Loon Lake Copper Company and J. Webster Hancox, as Receiver of the Loon Lake Copper Company,  
GREETING:

YOU ARE HEREBY CITED and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 29th day of November, 1924, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the Eastern District of Washington in the matter wherein the Massachusetts Trust Company, Trustee, is appellant and Loon Lake Copper Company and J. Webster Hancox, as Receiver of Loon Lake Copper Company, are appellees, to show cause, if any there be, why the decree of the District Judge entered on the 6th day of May, 1924, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 30th day of October, 1924.

J. STANLEY WEBSTER,  
District Judge.

[Seal]

Attest: ALAN G. PAINE,  
Clerk.

By \_\_\_\_\_,  
Deputy.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington. Oct. 30, 1924, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy.

Copy received Oct. 30, 1924.

WILLIAM C. MEYER.

Copy received.

J. WEBSTER HANCOX,  
Receiver, and for  
SAM'L R. STERN and  
ALBERT KULZER,  
Attorneys for Appellees. [39]

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In the District Court of the United States in and  
for the Eastern District of the State of Wash-  
ington, Northern Division, Sitting at Spokane.

MASSACHUSETTS TRUST COMPANY, Trus-  
tee,

Plaintiff and Appellant,

vs.

LOON LAKE COPPER COMPANY, and J.  
WEBSTER HANCOX, as Receiver of  
LOON LAKE COPPER COMPANY,  
Defendants and Appellees.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the District Court of the United  
States for the Eastern District of Washington,  
Northern Division:

YOU ARE HEREBY REQUESTED, in pre-  
paring your return to the citation on appeal in the  
above-entitled cause, to include therein the follow-  
ing (omit formal headings):

1. Bill of complaint (omitting the trust deed  
as set out therein).
2. Answer of Loon Lake Copper Company.

3. Answer of J. W. Hancox, Receiver.
4. Order striking from answer.
5. Decree appealed from.
6. The transcript of testimony as certified by the District Judge.
7. Assignments of error.
8. Petition on appeal.
9. Order allowing appeal.
10. Appeal bond.
11. Citation on appeal.
12. Praecipe for transcript of record, which comprises all the papers, records, or other proceedings than above mentioned which are necessary to be included by the Clerk of said Court in making up [40] his return to said citation as a part of such record.
13. Stipulation to transmit original transcript of testimony.
14. The trust deed (Exhibit 4) including the filing marks and clerk's certificate thereto (but omitting page 2-30 inclusive thereof).
15. Exhibits 1 and 3 attached to the Deposition of Arnold Whittaker.

F. W. DEWART,  
L. H. BROWN,  
Attorneys for Appellant.



Copy received October 31, 1924.

J. WEBSTER HANCOX,  
Receiver, and for  
SAM'L R. STERN and  
ALBERT KULZER,  
Attorneys for Receiver.

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WILLIAM C. MEYER,  
Attorneys for Appellees.

Filed in the U. S. District Court, Eastern District of Washington, Oct. 30, 1924, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [41]

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In the District Court of the United States in and for the Eastern District of the State of Washington, Northern Division, Sitting at Spokane.

MASSACHUSETTS TRUST COMPANY, Trustee,

Plaintiff and Appellant,  
vs.

LOON LAKE COPPER COMPANY and J. WEBSTER HANCOX, as Receiver of LOON LAKE COPPER COMPANY,  
Defendants and Appellees.

STIPULATION RE TRANSMISSION OF TRANSCRIPT OF EVIDENCE AND EXHIBITS.

It is hereby stipulated by and between F. W. Dewart and Lawrence H. Brown, attorneys for

appellant, and J. W. Hancox, S. R. Stern, A. I. Kulzer and W. C. Meyer, attorneys for appellees, that the original of the transcript of evidence and exhibits certified by the District Judge on October 30, 1924, may be sent up to the Circuit Court of Appeals and that the clerk shall not be required to make a copy thereof.

Dated October 31, 1924.

F. W. DEWART,

L. H. BROWN,

Attorneys for Appellant.

WILLIAM C. MEYER,

J. WEBSTER HANCOX,

Receiver, and for

SAM'L R. STERN and

ALBERT KULZER,

Attorneys for Receiver.

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Attorneys for Appellees.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 30, 1924, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [42]

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EXHIBIT No. 4.

No. 47238.

TRUST DEED.

THIS INDENTURE made as of the fifteenth day of November, A. D. 1918, by and between the LOON LAKE COPPER COMPANY, a corporation organized and existing under the laws of the State of Washington (hereinafter called the "Com-

pany”), of the one part, and MASSACHUSETTS TRUST COMPANY, a corporation organized and existing under the laws of the Commonwealth of Massachusetts (hereinafter called the “Trustee”), of the other part.

WHEREAS the Company has authorized the issue of ninety thousand dollars (\$90,000) of its bonds and desires to secure the payment thereof by a mortgage of all the real estate and tangible personal property that it now owns or may hereafter acquire; and

WHEREAS these presents have been duly authorized at a meeting of the directors of the Company duly called and held, and approved at a meeting of the stockholders of the Company duly called and held, and all things necessary to authorize the execution and delivery of this instrument and to make said bonds, when duly issued and certified by the Trustee, binding, valid and legal obligations of the Company, and to render this instrument valid security therefor, have been duly performed; and

\* \* \* \* \*

## ARTICLE XII.

### General Provisions.

All the covenants, stipulations, promises and agreements in this indenture contained by or on behalf of the Company shall bind and be binding upon its successors or assigns, whether so expressed or not.

The word “Trustee” as used herein shall mean

the Trustee herein named, and *it* successor or successors in the trust hereby established, whether so expressed or not, and all powers, rights [43] *priviledges*, immunities and duties hereinbefore granted to the Trustee shall likewise be applicable to each and every such successors.

The term "mortgaged property" and "mortgaged premises," as used herein, shall mean all the property now or hereafter mortgaged or pledged hereunder.

Although this indenture is dated for convenience and for the purpose of reference as of November 15, 1918, the actual date of the execution hereof is November 27, 1918.

IN WITNESS WHEREOF LOON LAKE COPPER COMPANY has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by its President and Secretary, thereunto duly authorized and MASSACHUSETTS TRUST COMPANY, in token of its acceptance of the trusts hereby created, has also executed these presents this twenty-seventh day of November, A. D. 1918.

LOON LAKE COPPER COMPANY,

By JAMES C. McCORMICK,

President.

By RALPH L. FLANDERS,

Secretary.

[Corporate Seal—Loon Lake Copper Company,  
Washington.]

Executed in duplicate. Signed, sealed, acknowledged and delivered in the presence of

MERRITT STEGMON.

MASSACHUSETTS TRUST COMPANY,

By EDGAR R. CHAMPLIN,

President.

ARNOLD WHITTAKER,

Secretary.

[Seal—Massachusetts Trust Company, Boston, Mass.  
Incorporated 1914.]

Signed, sealed, acknowledged and delivered in the presence of

MERRITT STEGMON.

Commonwealth of Massachusetts,  
County of Suffolk,—ss.

James C. McCormick and Ralph L. Flanders, being duly sworn, each for himself on oath deposes and says: That he, the said James C. McCormick, is and at the time of the execution of the foregoing mortgage and deed of trust was the President of Loon Lake Copper Company, a corporation and the mortgagor therein named, and the same person who as such President executed said mortgage and deed of trust in behalf of said [44] corporation; that he, the said Ralph L. Flanders is at the time of the execution of said mortgage and deed of trust was Secretary of said corporation, the said mortgagor, and the same person who as such Secretary attested such mortgage and deed of trust in behalf of said corporation; and that the said mortgage and deed of trust is made in good faith and without design to



hinder, delay or defraud creditors or any creditor of said corporation.

[Corporate Seal—Loon Lake Copper Company, Washington.]

JAMES C. McCORMICK,  
President.

RALPH L. FLANDERS,  
Secretary.

Subscribed and sworn to before me this twenty-seventh day of November, 1918.

A. WHITTAKER,  
Notary Public in and for the Commonwealth of Massachusetts, Residing in Winchester.

[Seal—Arnold Whittaker, Notary Public, Commonwealth of Massachusetts.]

My commission expires Jan., 1923.

Commonwealth of Massachusetts,  
County of Suffolk,—ss.

On this twenty-seventh day of November, 1918, before me personally appeared James C. McCormick and Ralph L. Flanders, to me known to be the President and the Secretary, respectively, of Loon Lake Copper Company, one of the corporations that executed the within and foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute and attest said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

A. WHITTAKER,

Notary Public in and for the Commonwealth of  
Massachusetts, Residing in Winchester, Mass.

[Seal—Arnold Whittaker, Notary Public, Commonwealth of Massachusetts.]

My commission expires Jan., 1923. [45]

Commonwealth of Massachusetts,  
County of Suffolk,—ss.

On this twenty-ninth day of November, 1918, before me personally appeared Edgar R. Champlin and Arnold Whittaker, to me known to be the President and the Secretary, respectively, of Massachusetts Trust Company, one of the corporations that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute and attest said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

CHARLES E. CARLTON,

Notary Public in and for the Commonwealth of  
Massachusetts, Residing in Cambridge, Mass.

[Seal—Charles E. Carlton, Notary Public for the  
Commonwealth of Massachusetts, U. S. A.]

My commission expires Mch. 28, 1924.

Filed for record at the request of F. W. Dewart, Dec. 11, 1918, at 11:30 o'clock A. M., and recorded December 14, 1918.

EARLE T. GATES,  
County Auditor.  
By EARLE T. GATES.

Recorded in Book 34 of Records of Mortgages, at page 7 to 23.

State of Washington,  
County of Stevens.

I, Dorothy Dexter, Auditor in and for the County of Stevens, State of Washington, do hereby certify that the within and foregoing is a full, true and correct copy of the record of an instrument of writing now recorded in my office on page 723, volume 34 of the record of Mortgages and on file under #12199 of the records of Chattel Mortgages.

In witness whereof I have hereunto set my hand and affixed my official seal, this 11 day of October, 1923. [46]

DOROTHY DEXTER,  
Auditor Stevens County, Wash.  
By \_\_\_\_\_,  
Deputy.

47238

State of Washington,  
County of Stevens,—ss.

This certifies that this instrument was filed for record in the Auditor's office of said County on the 11 day of Dec., 1918, at 11 o'clock and 30 min. A. M., at the request F. W. Dewart, and recorded in book

34 of records of Mtgs., Stevens County, Wash-  
ington, on page 7, Dec. 14, 1923.

EARL T. GATES,

Aud. of Stevens Co., Wash.

Ex. No. 4. Ad. A. G. Paine, Clerk. [47]

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EXHIBIT No. 1.

No. E—4220. Exhibit No. 1. (Seal) A. W.  
Murray, Notary Public.

6782

Telephones, Main 6783

Guy A. Ham.

Walter F. Frederick.

Harry H. Ham.

Ralph H. Willard.

William H. Taylor.

HAM, FREDERICK & WILLARD,

Attorneys at Law,

Sixth Floor,

24 Mild Street, Boston.

Please reply to

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December 4, 1918.

Mr. Frederick W. Dewart,  
Spokane, Wash.

Dear Sir:

I am enclosing, herewith, indenture duly executed  
by officers of the Mass. Trust Company, as well as  
by officers of the Loon Lake Copper Company.

Will you please see to it that this is recorded with  
the proper officials in the State of Washington. As

the indenture covers both real estate and personal property, under the laws of Massachusetts it would be necessary to have this recorded in our Registry of Deeds to cover the real estate, and in the City Clerk's office to cover the personal property. I don't know, of course, the law in your state, but will you see that it is recorded in order to cover both classes of property?

Yours very truly,  
GUY A. HAM.

GAH/k. [48]

EXHIBIT No. 3.

Exhibit No. 3. No. E—4220. (Seal) A. W. Murray, Notary Public.

December 10, 1918.

Mr. Guy A. Ham, Attorney at Law,  
24 Milk Street,  
Boston, Massachusetts.

Dear Mr. Ham:

Your favor of December 4th duly received, enclosing indenture of the Loon Lake Copper Company to the Massachusetts Trust Company.

I have already sent this to the Auditor of Stevens County for recording, as a real estate mortgage and as a chattel mortgage, in accordance with your suggestion. This is necessary in our state, but both records are made by the County Auditor.

Yours truly,  
(Signed) F. W. DEWART.

FWD:MS. [49]



In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division.

No. E—4220.

MASSACHUSETTS TRUST COMPANY,  
Complainant,

vs.

LOON LAKE COPPER COMPANY and J. WEB-  
STER HANCOX, as Receiver of the LOON  
LAKE COPPER COMPANY,  
Defendants.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Eastern District of Washington,—ss.

I, Alan G. Paine, Clerk of the District Court of  
the United States for the Eastern District of Wash-  
ington, do hereby certify that the foregoing pages  
numbered from 1 to 49, inclusive, constitute and  
are a complete, true and correct copy of the record,  
pleadings, orders and all proceedings had in said  
action, as the same remain on file and of record in  
said District Court, and that the same which I  
transmit constitute my return to the order of ap-  
peal, lodged and filed in my office on the 27th day  
of October, 1924.

And I hereby annex and transmit the original  
Citation issued and filed in said suit.

I further certify that the cost of preparing and certifying said record amounts to the sum of \$15.35, and that the same has been paid in full by the complainants and appellants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, and the City of Spokane in said Eastern District of Washington, in the Ninth Judicial District, this 3d day of November, A. D. 1924, and the Independence of the United States of America the one hundred and forty-ninth.

[Seal]

ALAN G. PAINE,  
Clerk. [50]

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[Endorsed]: No. 4389. United States Circuit Court of Appeals for the Ninth Circuit. Massachusetts Trust Company, a Corporation, Appellant, vs. Loon Lake Copper Company, a Corporation, and J. Webster Hancox, as Receiver of the Loon Lake Copper Company, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed November 6, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

